

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RYAN PFAHLER and MARCY PFAHLER,

Plaintiffs-Appellants,

v

JAMES SCHAB and TERESA SCHAB,

Defendants-Appellees.

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UNPUBLISHED

May 15, 2003

No. 235439

Kent Circuit Court

LC No. 00-000691-NZ

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motions for summary disposition and costs. We affirm in part and reverse in part.

In 1989, defendant James Schab built the house that is the subject matter of the instant dispute. Defendants lived in the house until 1996, when they listed it for sale. The parties entered into a purchase agreement in May 1996, which included two "as is" clauses. In accordance with MCL 565.957, defendants executed a seller disclosure statement. Defendants represented that there were no known problems with the plumbing and electrical systems in the house.

In June 1996, plaintiffs hired an inspection company to perform a "basic" inspection of the house. The inspection report noted several problems with the plumbing and electrical systems. Nevertheless, plaintiffs purchased the house and moved in during September 1996. In early 1997, plaintiffs began experiencing problems with the plumbing and electrical systems, which continued to escalate through September 1998. At about that time, plaintiffs determined that the township had no records of final inspections or an occupancy permit for their house. Plaintiffs sued defendants in January 2000, alleging a claim of fraud and misrepresentation.

Following discovery, defendants moved for summary disposition pursuant to MCR 2.116(C)(10), contending that plaintiffs' claims were barred by: (i) the three-year statute of limitation, MCL 600.5805(9); (ii) the "as is" clauses in the purchase agreement, and (iii) the home inspection. The trial court agreed with all three contentions, and granted defendants' motion for summary disposition. The trial court also found that plaintiffs' claim was without merit and imposed sanctions.

Plaintiff contends that the trial court erred in granting defendants' motion for summary disposition. We review de novo a trial court's ruling on a motion for summary disposition. *Haliw v Sterling Heights*, 464 Mich 297, 301; 627 NW2d 581 (2001). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), we consider "the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Id.* at 302. "Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.*

Plaintiffs introduced sufficient evidence establishing that there were plumbing and electrical defects in the home. However, plaintiffs purchased the home "as is." We have recognized that "the buyer bears the risk of loss under an 'as is' contract unless the seller fails to disclose concealed defects known to him." *Conahan v Fisher*, 186 Mich App 48, 49; 463 NW2d 118 (1990).

Here, although defendants built the house, and it was later determined that it was built defectively, it does not necessarily follow that defendants *knew* that they built a house with plumbing and electrical defects. Plaintiff Ryan Pfahler's affidavit indicated that the first problem with the plumbing system occurred approximately three months after plaintiffs purchased the home. The affidavit further indicated that plaintiffs "did not recognize the magnitude and severity of the problems until they appeared in combination in the fall of 1998 . . . ." Thus, plaintiffs were able to live in the home for approximately two years before determining the scope of the defects. Indeed, there is no evidence indicating that defendants had any prior problems with the plumbing or electrical systems. In fact, there is no evidence indicating that defendants knew that there were defects in the electrical and plumbing systems. As such, reasonable minds could not differ in rejecting plaintiffs' contention that defendants failed to disclose a known defect.

Moreover, a party may not recover for fraudulent misrepresentation if he or she unreasonably relies on the representation. *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 690-691; 599 NW2d 546 (1999). Here, although defendants represented that there were no known defects in the plumbing and electrical systems, the inspection revealed problems with both systems. Rather than having further inspections done, plaintiffs chose to rely on defendants' representation that there were no known defects. Under the circumstances, reasonable minds could not differ in concluding that plaintiffs' reliance on defendants' representation was unreasonable. *Id.* Consequently, the trial court did not err in granting defendants' motion for summary disposition.<sup>1</sup> *Haliw, supra* at 301-302.

However, we note that plaintiffs' complaint arose out of a legitimate property dispute and properly alleged all the elements for a fraudulent misrepresentation claim. Although discovery failed to produce sufficient facts to support the complaint and avoid summary disposition, the complaint was plainly not "devoid of arguable legal merit."<sup>2</sup> *Szymanski v Brown*, 221 Mich App

<sup>1</sup> We may affirm where the trial court reaches the right result, but for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001). In fact, in light of our ruling, we decline to address the statute of limitation issue.

<sup>2</sup> Although we did not address the statute of limitations issue, we do note our ruling that a "fraud (continued...)"

423, 436; 562 NW2d 212 (1997). Accordingly, the trial court clearly erred in deeming plaintiffs' complaint frivolous and imposing sanctions. *Id.*

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Henry William Saad

/s/ Patrick M. Meter

/s/ Donald S. Owens

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(...continued)

claim must be brought within six years from the time that the claim accrues.” *Boyle v General Motors*, 250 Mich App 499, 502; 655 NW2d 233 (2002). At the very least, the *Boyle* ruling provides further support for our conclusion that there was arguable legal merit to plaintiffs' claim.